United States Court of Appeals

for the Second Circuit

PETITION FOR REHEARING EN BANC

76-6150

IN THE UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff-Appellee,

v.

LOCAL 14, INTERNATIONAL UNION OF OPERATING ENGINEERS; LOCAL 15, INTERNATIONAL UNION OF OPERATING ENGINEERS, et al.,

Defendants-Appellants.

On Appeal from the United States District Court for the Southern District of New York

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PETITION OF EQUAL EMPLOYMENT OPPORTUNITY COMMISSION FOR REHEARING AND SUGGESTION FOR REHEARING EN BANC

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PETITION OF EQUAL EMPLOYMENT OPPORTUNITY COMMISSION FOR REHEARING AND SUGGESTION FOR REHEARING EN BANC

The Equal Employment Opportunity Commission seeks rehearing, with a suggestion for rehearing en banc of that portion of the panel opinion of March 21, 1977, which declines to affirm, without further testimony, the finding of the district court that Local 15 violated Title VII in its admission, recruitment, training, and work referral policies. The panel opinion found that statistical evidence did not prove a prima facie case because the district court erroneously limited the geographic area on which the statistics were based to New York City, the union's territorial jurisdiction. Even under the standard enunciated by the panel, however, the statistics show more than ample disparity between the minority admissions after

the effective date of Title VII and the minority representation in the relevant labor pool. Moreover, the district court's findings as to overt acts of discrimination do not, as the panel opinion suggests, rest on the prima facie case created by the statistics, but were independently established by overwhelming evidence. There is thus no reason to delay an immediate finding of liability and at least partial implementation of the decree as it affects the unions so that at least some relief can be given now to those minorities who have so long been excluded from opportunities for employment.

STATEMENT

1. The district court's conclusion that Local 15 had violated Title VII was based on detailed findings of fact. (App.I 104-12) The court found a prima facie case of exclusion of minorities from statistics showing that at the time of trial, only 6.5% of Local 15's more than 6,000 members were minorities (App.I 83), while minorities comprised 36.39% of the relevant labor force--i.e., males in the labor force, 16 years of age or over, with a high school education or less, living in New York City, Local 15's territorial jurisdiction.[1/]

1/ Local 15's trade jurisdiction covers the operation and maintenance of equipment for building and heavy construction sites, and related work, including welding and surveying. It has five branches: 15 and 15A cover operating engineers, maintenance engineers, welders on construction sites, and relatively unskilled oilers, helpers and maintenance personnel; 15B covers maintenance workers at the Port Authority of New York and various race tracks; 15C covers maintenance engineers (i.e., mechanics) for construction equipment who work in indoors repair shops; 15D covers surveying work on construction sites. (App.I 76-77)

(App.I 86, 104, 125) It rejected a contention that use of the New York figures alone grossly overstated the percentages noting that "the Union has introduced no evidence on the question at all." (App.I 106)

The panel opinion holds that this was error in that the district court should have looked at "the region from which the union draws its members." (Slip Opinion at 3) The panel noted that according to Local 15's calculations (which were based on where its members live), the minority percentage in the labor pool was 16.2%. (Id.) Accepting the figures advanced on appeal by Local 15 (the accuracy of which the EEOC had contested) purportedly showing that between the effective date of Title VII and the commencement of this suit, 20% of those it had admitted to membership had been minorities (Slip Op. at 3), the panel held "if the figures advanced by Local 15 are correct, the union's present practices neither perpetuate nor freeze the effects of past discrimination." (Slip Op. at 4).

The record shows that between January 1966 and June 1972 (the commencement of this action), Local 15 admitted less than 10% minorities. Census data shows that the minority share of the relevant labor pool, using the overly broad New York-Northeastern New Jersey Standard Consolidated Area, was at least 24.1%

2. The district court also made independent findings as to the manner in which each of Local 15's practices discriminated against minorities seeking either membership in

the union or work in the industry and Local 15's failure to prove a defense to them.

The district court found that Local 15 maintained no consistent or objective criteria for approving applicants for membership. (App.I 81, 92) Prior to 1971, there was no system for testing the qualifications of persons seeking membership. In 1971, Local 15 instituted a new requirement for union membership--demonstrating proficiency on at least three pieces of equipment used at the newly opened training school. (App.I 87, 92-93)

This new testing requirement, which was a significant increase in admission standards, was applied almost exclusively to minorities.[2/] (App.I 87, 95-96) Minorities seeking work from or membership in Local 15 were generally referred to the school for testing, and if unable to pass the test, were referred to the school for training.[3/] (App.I 87) On

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2/ "Since the school's inception, minorities seeking work from or membership in Local 15 are referred by business agents to the school, where, if they claim to be experienced, they are tested on three types of equipment or, if inexperienced, are admitted to the school or placed on a waiting list. However, all applicants for membership have not been sent to the school for testing or training but are permitted to work and be tested by their employers. Very few of the white applicants are required to take and pass the tests at the school...." (App.I 87) (emphasis added)

3/ The court found the new testing requirement deficient in several respects: It was irrelevant to the many available non-operator jobs, e.g., maintenance engineers, oilers. It was administered only on the limited equipment available at the school and not on the many other major pieces of equipment actually used on the job. It, therefore, did not even determine a man's ability to operate three pieces of Local 15 equipment. Proficiency was required on three pieces of the school's equipment even though many men specialized on

(footnote continued on next page)

the other hand, most whites were not tested but continued to become union members by obtaining a job through friends or relatives in the union and entering the union under the collective bargaining agreement security clauses requiring new employees to join the union after a specified number of days on the job.[4/] (App.I 87, 92, 95-96)

As to the union's work referral practices, the district court found that "minorities are referred less frequently and wait far longer for job referrals no matter what the employment conditions...." (App.I 113) Work assignments were not made on any objective basis such as first-come, first-served, or longest out of work. They were made by business agents who were all white and knew mostly other union members, but few minorities. The agents made the assignments on the basis of their personal knowledge of the man's skills.[5/] (App.I

3/ (footnote continued)
one type of machinery or as a non-operator. Furthermore, the test was completely subjective, without uniform and objective criteria for determining the skill and proficiency required for a passing grade. (App.I 92-95)

4/ In addition, Local 15 refused to accept the experience and qualifications of many minority persons who had completed other training programs more effective than Local 15's training program (primarily the United States Army Corps of Engineers and the Job Corps program sponsored and taught by the International Union of Operating Engineers), or who had extensive prior private experience outside New York (usually in Latin America or the West Indies), even though it referred to work and admitted to the union less qualified or less experienced whites. (App.I 86, 88-89, 96)

5/ In obtaining work, minorities were also disadvantaged by Local 15's collective bargaining agreements allowing contractors to hire union members directly. It was customary for contractors to hire union members who had previously worked for them, with or without going through the hiring hall.
(footnote continued on next page)

90-91, 96, 112-13).

The relief ordered by the court established specific objective, non-discriminatory criteria for admission of minority applicants to union membership (App.I 247-49) and for work referral. (App.I 253-60)

The panel declined to pass on the district court's conclusions as to the union's recruitment practices, admission tests and referral policies stating that the district court "had relied on his prior finding of a prima facie case in deciding these issues and placed the burden of justification upon the local." (Slip Op. at 5) It ruled that on remand, the EEOC was to bear the burden of proving discrimination in these areas should it fail to establish a prima facie case through statistical evidence.[6/]

ARGUMENT

THE PANEL IMPROPERLY REVERSED THE DISTRICT COURT'S FINDING AS TO LOCAL 15'S LIABILITY.

1. In finding that the government may not have made a prima facie showing of discrimination, the panel had to assume

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5/ (footnote continued)
(App.I 90) Since the union has been overwhelmingly white, this practice in itself excluded most nonunion minorities from a significant number of jobs.

6/ As to relief, the panel directed the district court to hold an evidentiary hearing on remand at which the contractors' associations, which had been joined for purposes of relief only, would have an opportunity more fully to present their views concerning those aspects of the relief affecting the industry.

to some degree the validity of the statistics presented for the first time on appeal by Local 15. The union claimed minority representation of 20% in its admissions since 1965 and 16.2% minority representation in the applicable labor pool. Both figures are demonstrably wrong. The record shows that its admission rate of minorities after 1965 was less than 10%. And, on any theory of the applicable labor pool--even that using the improperly broad geographic area proposed by Local 15, the New York-Northeastern New Jersey Standard Consolidated Area--minorities comprised 24.1% of the relevant labor force. This degree of disparity is thus unquestionably sufficient to constitute a prima facie showing that Local 15 discriminated against minorities in its admission practices. Even assuming that the district court's use of New York City statistics was improper, the finding of liability should have been affirmed, as was the finding of Local 14's liability. At most, the error found by the panel might require a recalculation of goals; it does not justify further delay with respect to liability.

a. As to the post-Act minority admission rates, Local 15 used incomplete information concerning total admission rates for the relevant years. As we pointed out to the panel in our post-argument letter of December 17, 1976, the data concerning total number of admissions from 1966 through June 1972 was taken from a chart not in evidence listing the number of admissions into and transfers between three of Local 15's branches (15, 15A and 15C). The chart does not

list any information concerning the other two branches, 15B and 15D.[7/] (App.I 66, 68-69) However, the list of Local 15's minority members (PX 99) from which Local 15 took the number of minority admissions in each year, included members and their initiation dates in all of Local 15's branches, including 15B and 15D.[8/] Since every minority admission was counted, but nearly half (44%) of the total admissions were excluded, the minority admissions rate cited by the panel was grossly inflated.

A reevaluation of the record on appeal shows that the post-Act minority admission rate can be far more accurately computed.[9/] The total number of admissions in the relevant time

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7/ The Commission has never conceded the accuracy of Local 15's particular statistics concerning minority admission rates after the effective date of Title VII. In our brief (at p. 27) we stated only that the figures show (as they do) an increased percentage of minority admissions after the enactment of Title VII. The Commission did not accept the particular figures put forth by Local 15.

8/ For example, PX 99 shows that 39 minorities were initiated into Local 15D between January 1, 1966 and June 30, 1972 (PX 99 at pp. 6-7). But the chart from which Local 15 drew the purorted number of total admissions shows a blank space next to ocal 15D in each of the relevant years. Those blanks cannot ean zero admissions in those years since PX 99 shows 39 minorities were admitted. PX 98 shows that 888 persons were admitted into Locals 15B and 15D in those years.

9/ This method does not include those who both joined and withdrew from the union during the relevant period.

periods can be counted from PX 98, which lists all members of all branches of Local 15 as of August 7, 1972, and their initiation dates. The number of minority admissions in the relevant time can be counted from PX 99, an analogous minority membership list. Comparing the minority admissions to the total admissions from these exhibits demonstrates that between January 1, 1966, and June 30, 1972 (shortly after commencement of this suit), only 9.49% of those admitted were minorities.10/ (See detailed table set forth in Attachment A to this petition). This rate is one-half of the 20% rate claimed in Local 15's erroneous count.

Therefore even were the panel to rely on the 16.2% minority percentage of the labor pool asserted by Local 15, a figure we believe significantly inaccurate for reasons stated below, a prima facie case of discriminatory admission practices remains.

10/ These figures are derived from the original computer printout of Local 15's membership as of August 7, 1972, which is the document introduced at trial as PX 98. (Tr. 1769) The Comission has moved to substitute this original of PX 98 in the record on appeal for the incomplete photocopy currently in the record on appeal as PX 98. That photocopy is missing the last seven pages of the original on which are listed 299 Local 15B members with initiation dates from 1960 to 1972.

If the incomplete photocopy of PX 98 transmitted as part of the record on appeal is used to calculate the minority admission rate into Local 15 after 1965, those minorities listed on PX 99 as having been initiated into 15B must be excluded since none of the 15B minorities with initiation dates between 1966 and 1972 appear in the photocopy of PX 98. If the total and minority admissions into Local 15B are excluded, the minority rate of admission of the remaining branches of the local during that period was 8.75%. See Attachment B for a detailed table.

b. The 16.2% figure used by Local 15 is, however, clearly wrong. On its own predicate--that of the current addresses of its members--it is inaccurate since it is based only on figures for the total and black and Puerto Rican male civilian labor force 16 years or older. It failed to include males of Spanish origin other than Puerto Ricans; to exclude those black Spanish-surnamed individuals counted twice; to adjust the overall civilian labor force data to include only those with a high school education or less; or to adjust the figures to reflect the amount by which the Census Bureau undercounted.

The current addresses of the union members do not, in any event, represent a proper base. Current addresses demonstrate absolutely nothing about the area from which the union draws its members. They demonstrate only where union members choose to live after they become union members. Even addresses of union members at the time they joined the union do not constitute an acceptable base. Statistics must relate to the pool from which the union would draw its members in the absence of discrimination. See Rios v. Enterprise Association Steamfitters, Local 638, 501 F.2d 622, 632-33 (2d Cir. 1974). If a union whose members work in New York City discriminatorily drew its members only from largely white areas, defining the labor pool by the residences of the members would necessarily incorporate into the geographic definition of the labor pool the past discriminatory conduct of the union. It is, therefore, crucial to define the relevant labor force so as to reflect the labor force from which the union would draw its members in the absence of discrimination.

Census data shows that the vast majority of those working where the union members do, i.e., in the five counties of New York City, also live in New York City: of all employed males working in New York City, 76.16% also live in New York City; of all employed persons (male and female) with a high school education or less, working in New York City, 86.3% also live in New York City. See Attachment C. We therefore believe that for the purpose of determining liability (as distinct from fixing goals) it was not improper to rely on New York City statistics.[11/] This is justified, not because it is Local 15's territorial jurisdiction, but because it defines the geographic area where the general labor force lives.

But even if a much broader geographic base is used--the New York SMSA or the New York-Northeastern New Jersey (SCA)--a statistical case of discrimination exists. The minority share of the relevant labor force (males 16 years or over in the civilian labor force with a high school education or less) in the New York-Northeastern New Jersey Standard Consolidated Area (SCA) is 24.1% and in the New York SMSA,[12/] 27.29%.

11/ At a minimum, New York City should be given weight in proportion to the share it contributes to those working there.

12/ The New York-Northeastern New Jersey SCA includes Middlesex and Somerset Counties in New Jersey and the following SMSA's: New York, Newark, Jersey City, and Paterson-Clifton-Passaic. 1970 Census of Population, General Social and Economic Characteristics, New York, PC(1)-C34, Appendix A, at 4.

The New York SMSA includes the five counties of New York City and Westchester, Rockland, Nassau and Suffolk Counties. Bureau of the Budget, Standard Metropolitan Statistical Areas at 29. (1967).

See Attachment D. These percentages are calculated in accord with the standardized methods for evaluating census data developed by the courts of this circuit.[13/] Rios v. Enterprise Association Steamfitters, Local 683, 400 F.Supp. 983, 985-86 (S.D. N.Y. 1975); EEOC v. Local 28, Sheet Metal Workers, 401 F.Supp. 467, 488-89, 492-93 (S.D. N.Y. 1975), aff'd on this issue, 532 F.2d 821 (2d Cir. 1976); Patterson v. Newspapers and Mail Deliverers' Union, 384 F.Supp. 585 (S.D. N.Y. 1974), aff'd, 514 F.2d 767, 772 (2d Cir. 1975), cert. denied, ___U.S.___, 96 S.Ct. 3198 (1976).

With a minimum of 24% minority representation in the proper labor pool and a maximum 9.5% rate of minority admissions since 1965, the existence of a prima facie case of discrimination is clear. The finding of liability should be affirmed even on the panel's assumption that the statistical case was crucial to the other findings on which the conclusion of discrimination was based.

2. The findings concerning the union's overtly discriminatory practices do not, however, depend on the statistical case,

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13/ The methods used by the district courts in these cases have varied slightly. The method we use here (see Attachment D) is a composite of them. While application of the differing methods would produce slight differences in the ultimate figures, the differences would be so insignificant as not to undermine the statistical case.

Although these methods have been developed in relation to establishing proper remedial minority membership goals, the practice has been to use them in describing the labor pool for proof of liability as well. It may be that it would be appropriate to require more rigorous definition of the relevant labor pool for remedial goal purposes than for proof purposes. See Rios v. Enterprise Association Steamfitters, Local 638, supra, 501 F.2d at 632-33.

but stand on their own merit. Even if the burden were on the EEOC to prove discrimination in each of these areas, the evidence currently in the record on this appeal affirmatively demonstrates unlawful discrimination.[14/] See Statement, supra. For example, the district court found that the new admission test requirement imposed in 1971 was "an active and contemporary example of unlawful adverse and disparate treatment of minorities" (App.I 111) because it was applied almost exclusively to minorities. Requiring minority applicants to surmount an obstacle not equally imposed on all applicants is unlawful regardless of the minority admission rate into the union.

Similarly, as to work referral practices, the court found that, as a result of having the business agents make work assignments according to subjective discretionary criteria, and refer those union members they personally knew, minorities were referred less frequently and waited far longer for jobs. Such proof of unequal referral of both minority union members (even if equally admitted into the union) and minority non-union permit men supports the conclusion that the union unlawfully discriminated against minorities in work referral regardless of which party bears the burden of proof. In view of the overwhelming evidence of discriminatory treatment of minorities by the union in every aspect of its practices, it was clear from the record on appeal that even were the EEOC required to bear

14/ For record references in support of each of the district court's findings, see the Statement of Facts in the Commission's Brief as Appellee.

the burden of proof on remand, it would necessarily prevail. It was therefore inappropriate to require these portions of the district court's findings to be reconsidered on remand.

3. As to relief, the panel ruled that the district court had erred in not according the contractors' associations, which had been joined for relief only, an opportunity more fully to present their views as to the aspects of relief which affected the industry. We do not contest that ruling. What we do point out, however, is that much of the relief ordered by the district court does not affect the contractors but is directed only to the practices of the unions.[15/] The implementation of that relief should not be further delayed.

As we pointed out in our brief (at 56), the entry of relief followed full development in a sixteen-day trial of all the facts concerning union practices. The unions, unlike the contractors' associations, were active participants in that trial and had ample opportunity to present any testimony bearing on these issues. Since relief was fashioned to fit the discrimination proved at trial, the unions could, at an evidentiary hearing, add nothing of significance to that which they either

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15/ This relief includes the objective non-discriminatory admission to membership and work referral procedures by the union itself (with the exception of that portion of the order which requires an employer to hire only through the hiring halls) (App.I 247-60); the establishment of training programs (App.I 263-65); the award of back pay according to the specified criteria (App.I 265-68); and the appointment of an Administrator to implement the provisions of the order (App.I 243-47). The need for remedial minority membership goals should be approved with directions that the precise goal be determined on remand according to the standards enunciated by this Court.

presented or could have presented at trial, as to the major relief ordered.

The black and Spanish-surnamed men who have for years been at a great disadvantage in getting work in their chosen occupation as a result of their treatment by the unions should not be forced to wait yet another year or two before they begin to be treated equally. This suit was filed five years ago. A year ago the unions were found to have unlawfully deprived minority workers of equal job opportunities in a multitude of ways. The relief in question was entered in the fall of last year and the admission and work referral remedies had just begun to be implemented under the guidance of the Administrator when the panel stayed the order. The minorities who have waited so long for an equal chance to earn a livelihood should not be required to suffer further delays, at least as to the basic relief for practices which were clearly proved to be discriminatory at trial nearly three years ago.

CONCLUSION

For the reasons stated above, the Equal Employment Opportunity Commission urges the matter to be reheard, with a suggestion that rehearing be en banc.

Respectfully submitted,

April 22, 1977

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MINORITY ADMISSIONS INTO LOCAL 15 (ALL BRANCHES)

January 1966 - June 1972

	Total Admissions*	Minority Admissions**	Minority Admissions as percent of Total Admissions
1966	152	13	8.55%
1967	309	25	8.09%
1968	321	34	10.59%
1969	315	31	9.84%
1970	435	38	8.74%
1971	377	33	8.75%
Jan.-June 1972	114	18	15.79%
TOTAL: Jan.1966-June 1972	2023	192	9.49%

* PX 98
** PX 99

Attachment A

MINORITY ADMISSIONS INTO LOCAL 15 (EXCLUDING 15B)

January 1966 - June 1972

	Total Admissions*	Minority Admissions**	Minority Admissions as percent of Total Admissions
1966	149	13	8.72%
1967	205	12	5.85%
1968	242	19	7.85%
1969	304	28	9.21%
1970	414	36	8.70%
1971	366	31	8.47%
Jan.-June 1972	113	18	15.93%
TOTAL: Jan. 1966-June 1972	1793	157	8.76%

* PX 98

** PX 99

Attachment B

Attachment C

RESIDENCE, TOTAL EMPLOYED, 16 YEARS AND OVER,

WORKING IN NEW YORK CITY

	Living in NY SMSA	Living in NYC	Living in NY SMSA Outside NYC	Living Outside NY SMSA
Working in New York City:				
Males Employed All Education Levels	1,776,136 (90.4%)	1,496,298 (76.6%)	279,838 (14.2%)	188,618 (9.6%)
Total Employed With High School Education or Less	2,015,371 (94.6%)	1,839,625 (86.3%)	175,746 (8.3%)	116,141 (5.5%)

Source: 1970 Census, Subject Report, Journey to Work, Table 2 at 809-834.

Attachment D

MINORITY PERCENTAGE OF TOTAL MALE CIVILIAN LABOR FORCE

16 YEARS AND OLDER WITH HIGH SCHOOL EDUCATION OR LESS

TABLE A (1)

	Black male percentage of total male civilian labor force 16 yrs. and older with high school education or less	Spanish language male percentage of total male civilian labor force 16 yrs. and older with high school education or less	Total minority percentage of total male civilian labor force 16 yrs. and older with high school education or less
New York SMSA (Table A(2))	16.70%	10.59%	27.29%
New York-Northeastern New Jersey Standard Consolidated Area (Table A(3))	15.13%	8.97%	24.10%

CIVILIAN LABOR FORCE FIGURES CORRECTED FOR UNDERCOUNT

NEW YORK SMSA

TABLE A (2)

	(1) Original Total (Table A(4))	(2) Undercount Fraction[1]	(3) Column 1 ÷ (1-Column 2) = Total Corrected For Undercount[2]	(4) Final Percentage
Males in Civilian Labor Force 16 yrs. and older with high school education or less	2,135,221	.033	2,208,087	
Black Males in Civilian Labor Force 16 yrs. and older with high school education or less	332,189	.099	368,689	$\frac{368,689}{2,208,087}$ = 16.70%
Spanish Language Males in Civilian Labor Force 16 yrs. and older with high school education or less. Corrected for double-count[3]	226,079			$\frac{226,079}{2,135,221}$ = 10.59%
MINORITY PERCENTAGE OF TOTAL MALE CIVILIAN LABOR FORCE 16 OR OVER WITH HIGH SCHOOL EDUCATION OR LESS. (Corrected for both double-count of Black Spanish Language Males and census undercount)				27.29%

Footnotes on page D-4

CIVILIAN LABOR FORCE FIGURES CORRECTED FOR UNDERCOUNT

NEW YORK-NORTHEASTERN NEW JERSEY STANDARD CONSOLIDATED AREA

TABLE A (3)

	(1) Original Total (Table A(4))	(2) Undercount Fraction[1]	(3) Column 1 ÷ (1-Column 2)= Total Corrected For Undercount[2]	(4) Final Percentage
Males in Civilian Labor Force 16 yrs. and older with high school education or less	3,034,159	.033	3,137,703	
Black Males in Civilian Labor Force 16 yrs. and older with high school education or less	427,842	.099	474,852	$\frac{474,852}{3,137,703}$ = 15.13%
Spanish Language Males in Civilian Labor Force 16 yrs. and older with high school education or less. Corrected for double-count[3]	272,158			$\frac{272,158}{3,034,159}$ = 8.97%
MINORITY PERCENTAGE OF TOTAL MALE CIVILIAN LABOR FORCE 16 OR OVER WITH HIGH SCHOOL EDUCATION OR LESS. (Corrected for both double-count of Black Spanish Language Males and census undercount)				24.10%

Footnotes on page D-4

FOOTNOTES FOR TABLES A(2) AND A(3)

1/ U.S. Department of Commerce, Estimates of Coverage of Population by Sex, Race and Age: Demographic Analysis, PHC (E)-4, Table 3, at 29. (PX 3)

2/ Original Total = Corrected Total = (Corrected Total x Undercount Fraction)

or $0 = C - (C \times F)$

$0 = C(1 \times F)$

Therefore $C = \frac{0}{1 - F}$; or $\underset{\text{(Col. 3)}}{\text{Corrected Total}} = \frac{\text{Original Total}}{\text{1-Undercount Fraction}} = \frac{\text{(Col. 1)}}{\text{(1-Col. 2)}}$

3/ Spanish language figures are uncorrected for undercount because estimates of the percentage of Spanish language individuals undercounted have not been made by the Bureau of the Census. See supra at 21. (PX 3)

SUMMARY FROM TABLES B(1), B(2), AND B(3) OF MALE CIVILIAN LABOR FORCE 16 YEARS AND OLDER WITH HIGH SCHOOL EDUCATION OR LESS

TABLE A (4)

	Total Males in Civilian Labor Force 16 yrs. and older with a high school education or less (Table B(1))	Black Males in Civilian Labor Force 16 yrs. and older with a high school education or less (Table B(2))	Spanish Language Males in Civilian Labor Force 16 yrs. and older with a high school education or less--Corrected for Double-Count (Table B(3))
New York SMSA	2,135,221	332,189	226,079
New York-Northeastern New Jersey Standard Consolidated Area	3,034,159	427,842	272,158

D5

COMPUTATION OF MALE LABOR FORCE WITH HIGH SCHOOL EDUCATION OR LESS

TABLE B (1): TOTAL POPULATION

	Total Male Civilian Labor Force (Census Tab.85)	No. of Total Male Pop. 25+ With High School Education or less (Census Tab.83)	No. of Total Male Pop. 25+ (Census Tab.83)	Column 2 ÷ Column 3 = % of Males With High School Education or less	Column 1 x Column 4 = Male Civilian Labor Force With High School Education or less
New York SMSA	2,909,021	2,286,522	3,113,966	73.4%	2,135,221
New York-Northeastern New Jersey Standard Consolidated Area	4,133,732	3,192,664	4,351,187	73.4%	3,034,159

Note: All Census Tables referred to in Tables B(1), B(2), B(3) and C are from the 1970 Census of the Population, General Social and Economic Characteristics, New York, PC(1)-C34.

D6

COMPUTATION OF MALE LABOR FORCE WITH HIGH SCHOOL EDUCATION OR LESS

TABLE B (2): BLACK POPULATION

	Total Black Male Civilian Labor Force (Census Tab.92)	No. of Black Males 25+ With High School Education or less (Census Tab.91)	No. Black Males 25+ (Census Tab.91)	Column 2 ÷ Column 3 = % of Black Males With High School Education or less	Column 1 x Column 4 = Black Male Civilian Labor Force With High School Education or less
New York SMSA	378,347	358,538	408,353	87.8%	332,189
New York-Northeastern New Jersey Standard Consolidated Area	485,082	455,265	516,153	88.2%	427,842

D7

Attachment D

COMPUTATION OF MALE LABOR FORCE WITH HIGH SCHOOL EDUCATION OR LESS

TABLE B (3): SPANISH LANGUAGE POPULATION

	Total Spanish Language Males 16 yrs. and older in Civilian Labor Force (Table C)	No. Puerto Rican Males 25+ With High School Education or less (Census Tab.97)	No. Puerto Rican Males 25+ (Census Tab.97)	Column 2 ÷ Column 3 = % of Spanish Language Males with High School Education or less[5/]	Column 1 x Column 4 = Spanish Language Males in Civilian Labor Force 16 yrs. and older With High School Education or less[5/]
New York SMSA	236,732	154,998	162,343	95.5%	226,079
New York-Northeastern New Jersey Standard Consolidated Area	285,281	173,618	182,041	95.4%	272,158

5/ The figures in columns 2 and 3 are actually figures for Puerto Rican Males, not Spanish Language Males, since census tables only give figures for the former group. We are assuming that Spanish Language Males attend school with the same frequency as Puerto Rican Males.

D8

Attachment D

COMPUTATION OF TOTAL NUMBER OF SPANISH LANGUAGE MALES ABOVE 16 YEARS IN THE CIVILIAN LABOR FORCE CORRECTED FOR DOUBLE-COUNT

TABLE C

	Male Puerto Ricans Above 16 yrs. in Civilian Labor Force (Census Tab.98)	Spanish Language Pop. (Census Tab.81) / Puerto Rican Pop. (Census Tab. 81)	Spanish Language Males Above 16 yrs. in Civilian Labor Force (Col.1 x Col.2)	Double Count Fraction 4/	Spanish Language Males Above 16 yrs. in Civilian Labor Force, Corrected for Double-Count (Col.3 x Col.4)
New York SMSA	163,290	1,390,087 / 845,775	267,796	.884	236,732
New York-Northeastern New Jersey Standard Consolidated Area	186,541	1,645,283 / 951,037	322,716	.884	285,281

4/ 1970 Census data indicates that 11.6% of the Spanish Origin labor force in New York is black, resulting in a double-count of Spanish Origin males, first as a black and second as a member of the Spanish Origin group. 1970 Census of Population, Subject Reports, Persons of Spanish Origin, PC(2)-1C, Table 2. Since the double-count percentage for the Spanish Language group is not known, the Spanish Origin double-count percentage is used.

CERTIFICATE OF SERVICE

It is hereby certified that copies of the Petition of Equal Employment Opportunity Commission for rehearing and a suggestion for rehearing en banc, have been mailed, postage pre-paid on this date to the following counsel of record.

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April 22, 1977

BMS

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON, D.C. 20506

April 22, 1977

A. Daniel Fusaro, Clerk
United States Court of Appeals
for the Second Circuit
U.S. Courthouse
Foley Square
New York, New York 10007

Re: EEOC v. Local 14, International Union of Operating Engineers, et al.,

Dear Mr. Fusaro:

Please find enclosed for filing in the above-entitled case twenty-five (25) copies of the Commission's Petition for rehearing and suggestion for rehearing en banc.

Copies of the Commission's Petition have been mailed to counsel of record in accordance with the certificate of service attached thereto.

Sincerely,

Mary-Helen Mautner
Attorney for the Commission

Enclosure